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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,887	01/02/2002	Alan E. Thomas	AET1P001R2	5949

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EXAMINER

MULLEN, THOMAS J

ART UNIT	PAPER NUMBER
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2632

DATE MAILED: 06/13/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/050,887

Applicant(s)
Thomas

Examiner
Thomas J. Mullen

Art Unit
2632



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 13, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-46 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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1. The amendment filed 5/13/03 has been fully considered. It is noted that claims 19-20 have been resubmitted (without being amended) in proper reissue format (underlined), and that claims 21-46 have been added.
2. The disclosure is objected to because of the following informalities:
in the "Cross-Reference to Related Application" added by applicant in the response, the application serial number associated with US Pat. 5,548,276 should be included in the insertion.
Appropriate correction is required.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.
Claims 19-46 are rejected as being based upon a defective oath/declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is that any amendment is viewed as necessarily being for the purpose of correcting an error.
Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:
"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."
5. Claims 22-27, 29-30 and 34-43 are objected to under 37 CFR 1.75(a) for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 22, line 3, "is" should be --in--.

Claim 29, it is noted that “said sensing (a) senses infrared energy in a predetermined area” does not add anything to what is already recited in step (a) of claim 28.

Claim 30, “comprises the (d1) comparing” is vague (perhaps “the” should be deleted; note the recitation of “(d2)” in claim 31 by comparison).

Claim 34, last line, “is” should be --in--.

Claim 36, line 1, between “sensors” and “positioned” should be inserted --are--.

Claims 33 and 38 both recite a step “(f)”, and it is unclear if they refer to the same step or to different steps (note that claim 38 depends from claim 33, via claims 34 and 36).

6. Claims 28-29 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

In grand-parent application 08/158,989, claims 26-31 were rejected by the examiner and subsequently cancelled by applicant. Claim 27 of the ‘989 application (which incorporates the subject matter of claim 26 in that application by virtue of its dependency thereon) is of the same scope as claim 29 herein (as explained below), and is of narrower scope than claim 28 herein. Note that the subject matter added by dependent claim 27 to independent claim 26 in the ‘989 application includes the feature that infrared energy is sensed “in a predetermined area”; thus, claim 27 in the ‘989 application defines a “sensing” step of the same scope as the “sensing” step

in claim 28 herein. Further, given that the “sensing” step is defined in this manner in claim 27 of the ‘989 application, it is inherent that the preamble language of claim 26 in the ‘989 application -- “detecting a fire”--comes to mean, for the purposes of claim 27, “detecting a fire within a predetermined area”, since it is clear from the nature of the subject matter being claimed that the area in which infrared energy is being sensed is also the area in which fire is to be detected.

7. It is noted that many of the claims presently pending in this reissue application correspond (either exactly, or closely) to claims presented during the prosecution of the parent reissue application (09/137,960) and grand-parent application (08/158,989). Since those claims were cancelled from the other cases without any rebuttal or traversal of the examiner’s rejections, those rejections are repeated (substantially in the manner previously presented) below.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 28 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by McMenamin.

McMenamin (Fig. 1) discloses a fire detector comprising an infrared sensor (10), filter means (14), fire detecting means (16,22) and fire alarm (24). The filter passes nothing above 20 Hz (col. 2, lines 62-63) and is in that sense a low pass filter. McMenamin further teaches sensing infrared energy (inherently “within a predetermined area” surrounding the sensor, and McMenamin teaches as an example, “an area illuminated by fluorescent lighting”--col. 1, lines 70-71) and converting it to electrical signals (10), filtering the electrical signals (14), and detecting the presence of a fire based on the filtered electrical signals by comparing the filtered electrical signals with a predetermined threshold (16).

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10. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over McMenamin in view of Muller.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use the frequency range disclosed by Muller (col. 3, lines 57-58 and 62-63) to select the band for filter 14 of McMenamin as such a range was the accepted technology.

11. Claims 19-21, 28, 31-33 and 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odashima in view of McMenamin.

Note in Fig. 3 of Odashima, light receiving (infrared) sensors 19 (col. 3, lines 7-12) and "predetermined area" DA (col. 3, lines 13-16); the location of the fire within the predetermined area is determined by appropriately processing the signals from the sensors, so as to appropriately direct a fire-extinguishing nozzle toward the fire. Odashima further teaches "discriminating...the infrared rays of fire flames from those of other infrared ray sources", col. 2, lines 8-9. Note also in Odashima, Fig. 2; col. 5, lines 34-68; and col. 6, lines 14-27. McMenamin was discussed in paragraphs 9-10 above. It would have been obvious to one of ordinary skill at the time of the invention to use fire sensors such as are disclosed by McMenamin for sensing fire in the system of Odashima, as this was a known fire sensor suitable for this use.

Regarding claims 44-45, Odashima specifically teaches that the "predetermined area" may be a "room" in a "building" (col. 1, lines 17-18).

12. Applicant's arguments with respect to claims 19-20 have been considered but are moot in view of the new ground(s) of rejection.

13. This Office action is non-final.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tom Mullen whose telephone number is (703) 305-4382. The examiner can normally be reached on Mon-Thur from 6:30AM to 4:00PM. The examiner can also be

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reached on alternate Fridays (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu, can be reached on (703) 308-6730.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4700.

Any response to this action should be mailed to:


Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9314

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

T. Mullen
June 12, 2003


Thomas J. Mullen, Jr.
Primary Examiner
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